



California Fair Political Practices Commission

December 18, 1986

Ann Kough
9629 Brighton Way
Beverly Hills, CA 90210

Re: Your Request for Informal
Assistance
Our File No. I-86-317

Dear Ms. Kough:

You have requested advice concerning the effect of election laws on your client, a commercial landlord. This letter provides assistance with interpretation of the Political Reform Act (the "Act").^{1/} We cannot assist you regarding any laws other than the Act which might affect your client because the Commission's jurisdiction is limited to administration and interpretation of the Act. We are not aware of any other election laws that would affect your client, however.

Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c) (3).)

QUESTION

What disclosure and disqualification requirements would apply if your client arranges for its tenant, a nonprofit club, to provide free memberships to various local public officials?

CONCLUSION

Depending on the facts, the memberships would be either gifts or income to the public officials. If the memberships

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

are considered gifts and are valued at \$50 or more, or if the memberships are considered income and are valued at \$250 or more, the public officials who receive the free memberships would be required to disclose them on their statements of economic interests.

If the memberships are valued at \$250 or more, the public officials who receive the memberships would be required to disqualify themselves from participating in any governmental decision which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on your client or on the club.

ANALYSIS

Public officials who are listed in Section 87200 or who are designated in a state or local government agency's conflict of interest code must file yearly statements of economic interests. (Sections 87200-87313.) If a public official is listed in Section 87200, or if required by his or her agency's conflict of interest code, the official must disclose income and gifts on his or her statement of economic interests.

In your letter you stated that your client, a commercial landlord, wishes to have its tenant, a nonprofit club, grant free memberships to various local public officials. These free memberships would be part of an unlawful detainer settlement. The public officials would receive a waiver of the initiation fee and monthly dues. Meals, drinks or other benefits would be provided at the usual charge.

Depending on the facts of the situation, the memberships would be considered either gifts or income. Those officials who receive free memberships, and who are required to disclose gifts or income on their statements of economic interests, would be required to disclose the free memberships.

If the memberships are provided to the public officials without equal consideration in exchange, the memberships are considered gifts. (Section 82028.) Public officials who receive gifts aggregating \$50 or more from a single source during a calendar year must report those gifts on Schedule F of their statements of economic interests. (Sections 87207 and 87302(b).) The value of the memberships would be the total amount of initiation fees and monthly dues which would otherwise have been required of the public officials during the period covered by the statement of economic interests. The officials must report the club as the source of the gift, and the name of the commercial landlord as intermediary. The address and business activity of both the club and the

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commercial landlord must also be disclosed. (Sections 87210 and 87313.)

If the public officials who receive the memberships provided equal or greater consideration in exchange, the memberships are considered income. (Sections 82030 and 82044.) For instance, if the public officials were among the injured parties in the unlawful detainer suit, the club memberships could be considered compensation for the harm incurred by the public officials. If the memberships are considered income, and are valued at \$250 or more, the public officials must report the memberships on Schedule D of their statements of economic interests. (Sections 87202 and 87302(b).) The value of the memberships would be the total amount of initiation fees and monthly dues which would otherwise have been required of the public officials during the period covered by the statement of economic interests. If the memberships are considered income and are valued at \$250 or more, both your client and the club must be disclosed as sources of the income.

Whether the club memberships are considered gifts or income to the public officials, the memberships may require the officials to disqualify themselves from participating in certain governmental decisions. If the memberships are gifts or income valued at \$250 or more, the officials must disqualify themselves from any decision which would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the source of the gifts or income, or on the intermediary who arranged the gifts. (Section 87103(c) and (e).) Regulations 18702, 18702.1 and 18702.2 (copies enclosed) provide guidance for determining whether the reasonably foreseeable effect of a decision will be considered material.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosure

ANN KOUGH
ATTORNEY AT LAW
9629 BRIGHTON WAY
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TELEX: 68-7440

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November 11, 1986

Legal Division
FAIR POLITICAL PRACTICES
COMMISSION
Post Office Box 807
Sacramento, CA 95814


Dear Sir/Madam:

I represent a commercial landlord who, as part of an unlawful detainer settlement, wishes to have its tenant, a nonprofit club, grant free memberships to various local public officials. No meals, drinks, etc. would be provided without charge, but the initiation fee and monthly dues would be waived by the club.

I understand that such public officials would have to disclose the free memberships and might have to disqualify themselves from voting on any issues involving the club. Are there any other election law problems my client would encounter?

I appreciate your assistance in this matter.

Sincerely,


ANN KOUGH

AK/11



California Fair Political Practices Commission

November 18, 1986

Ann Kough
Attorney at Law
9629 Brighton Way
Beverly Hills, CA 90210

Re: 86-317

Dear Ms. Kough:

Your letter requesting advice under the Political Reform Act was received on November 17, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh